

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-026-16-1-5-01307-17
Petitioners: John C. & Renee M. Krick
Respondent: Lake County Assessor
Parcel: 45-07-22-330-003.000-026
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. The Kricks contested the 2016 assessment of their property located at 3516 LaPorte Avenue in Highland. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the residential property at \$145,900 (\$27,700 for land and \$118,200 for improvements).
2. The Kricks filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 10, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on the Kricks’ petition. Neither she nor the Board inspected the subject property.
3. John C. Krick appeared pro se. The Assessor appeared by Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

a. Exhibits:

Petitioner Exhibit 1:	Spreadsheet of comparable sales
Petitioner Exhibit 2:	E-mail stating parameters
Petitioner Exhibit 3:	E-mail stating adjustments for rec room/basement
Petitioner Exhibit 4:	E-mail showing original comparable properties from Hearing Officer Dourousseau
Petitioner Exhibit 5:	E-mail showing ability to utilize homes with differences
Petitioner Exhibit 6:	Hearing Officer Dourousseau’s spreadsheet presented to the PTABOA, page 1

- Petitioner Exhibit 7: Hearing Officer Drousseau’s spreadsheet presented to the PTABOA, page 2
- Petitioner Exhibit 8: Residential CMA Report with Kricks’ comparable sales
- Petitioner Exhibit 9: Residential Detail Report for 3121 Franklin Street
- Petitioner Exhibit 10: Residential Detail Report for 3229 Strong Street
- Petitioner Exhibit 11: Residential Detail Report for 2837 Norman Street
- Petitioner Exhibit 12: Residential Detail Report for 9551 O’Day Drive
- Petitioner Exhibit 13: Residential Detail Report for 3117 Grand Boulevard
- Petitioner Exhibit 14: Residential Detail Report for 9243 Grace Street
- Petitioner Exhibit 15: Residential Detail Report for 2541 Wicker Avenue
- Petitioner Exhibit 16: Residential Detail Report for 2736 Glenwood Street
- Petitioner Exhibit 17: Residential Detail Report for 8431 5th Street
- Petitioner Exhibit 18: Residential Detail Report for 8919 Lawndale Avenue
- Petitioner Exhibit 19: Residential Detail Report for 3440 Condit and 3414 Franklin (Hearing Officer Drousseau’s comparable properties)
- Petitioner Exhibit 20: Residential Detail Report for 3408 Highway (Hearing Officer Drousseau’s comparable property)
- Petitioner Exhibit 22: Residential Detail Report for 8110 W. 4th Place¹
- Respondent Exhibit 1: Property record card for subject property
- Respondent Exhibit 2: Spreadsheet of sales of ranch-style houses
- Respondent Exhibit 3: Comparable sales grid with adjustments

- b. The official record for this matter also includes the following: (1) all pleadings, briefs, motions and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and 4) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the Assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).
6. Here, the property’s assessment did not increase by more than 5% from 2015 to 2016. The Kricks therefore bear the burden of proof.

¹ Petitioners did not submit an Exhibit 21.

SUMMARY OF CONTENTIONS

7. The Kricks' case:

- a. The Kricks claim that the comps presented to the PTABOA by the Assessor's hearing officer were 7.7% higher per square foot than the comps that he had used to value their home when they first initiated this appeal. Because the PTABOA based its decision on inaccurate information, it should be overturned and the Board should assess the Kricks' home at the value they provided to the hearing officer. *Krick testimony; Pet'r Exs. 4, 7.*
- b. Prior to the PTABOA hearing, the Kricks provided the hearing officer with a set of 11 comps that were within 1.3 miles of their property. Without accounting for their land values, the average price per square foot was \$95. While the 11 comps are not exactly the same as the Kricks' home, there are no identical homes. But the hearing officer dismissed nearly all of the Kricks' comps because of minor differences in square footage or distance even though several of his own comps do not fall within the ranges he said were acceptable for those characteristics. The Kricks argue that the problem with the appeal process is that there is only flexibility when it benefits the Assessor's office. They think taxpayers need to know the "parameters of acceptability" prior to the start of the appeal process. *Krick testimony; Pet'r Exs. 1-6, 8-13, 15-18.*
- c. Although the hearing officer originally stated that properties within a mile of the Kricks' home were acceptable for comparison, he later told the Kricks that properties had to be within a half mile of their property to be comparable. The Kricks then selected three comps within a half mile of their property, two of which the hearing officer provided to them. After deducting the comps' assessed land values from their sales prices, the comps have an average sale price of \$98.83 per square foot. Applying that pricing to the Kricks' property and adding their current land assessment back in produces an assessed value of \$136,800, which the Kricks contend is a more accurate valuation. *Krick testimony; Pet'r Exs. 1, 2, 4, 6-10, 19.*

8. The Assessor's case:

- a. The Assessor identified 12 confirmed sales of ranch homes in Highland. He did not focus on their distance from the subject because distance would not matter to buyers looking for a ranch in Highland. He selected comps within an acceptable range of the subject's square footage. Additionally, all of the comps are similar in age and exterior finish, and have unfinished basement areas. The Assessor also tried to stay within the January 1, 2015 to January 1, 2016 timeframe. Even though some of the sales occurred after the assessment date, they are still acceptable because there was no real price movement during that time. And when there are no sales in the year prior to the assessment date, the search may need to expand into years outside that range.

The average price per square foot for the 12 sales was \$130.75, which includes the land value. *Metz testimony; Resp't Ex. 2.*

- b. The Assessor also discussed the sales of three comparable, one-story homes located within close proximity to the subject that he thinks support the assessment. These sales occurred in 2015. After adjusting their sale prices, the median price per square foot was \$167.68, which is well above the average of the other comps. *Metz testimony; Resp't Ex. 3.*
- c. For whatever reason, the prior hearing officer deducted the land values from the sales prices when calculating a price per square foot, which is not an acceptable way of calculating value. But the Assessor calculated the \$130.75 and \$167.68 values using the full sales prices. Given the similarities between the Kricks' property and the 12 ranch sales in terms of style, age, and square footage, the Assessor contends the Kricks' assessment should be \$130.75 per square foot, or approximately \$144,000. And he is willing to reduce the Kricks' 2016 assessment to that value. *Metz testimony; Resp't Ex. 2.*

ANALYSIS

9. The Kricks failed to make a prima facie case for reducing their property's 2016 assessment, but we reduce it to \$144,000 based on the Assessor's concession. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax

Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2016, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5(a).

- c. The Kricks offered evidence regarding the sales of three purportedly comparable properties that are located within a half mile of their home. In doing so, the Kricks essentially relied on a sales comparison approach. The sales comparison approach “estimates the *total value of the property* directly by comparing it to similar, or comparable, properties that have sold in the market.” MANUAL at 2 (emphasis added).
- d. To effectively use the sales comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that properties are “similar” or “comparable” do not suffice. Instead, the proponent must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Long*, 821 N.E.2d at 471. The proponent must similarly explain how relevant differences affect their values. *Id.*
- e. Here, the Kricks did little to relate any of their comps’ specific features and characteristics to their property. Although the Kricks offered some limited comments about size and distance, they were insufficient to demonstrate comparability. And the Kricks did not even attempt to make adjustments for any relevant differences between the comps and their property. The Kricks’ analysis therefore falls well short of what is required for comparative sales data to carry probative weight.
- f. Additionally, the Kricks offered no support for their decision to deduct the comps’ assessed land values before calculating an average sales price. Again, the sales comparison approach estimates the total value of the property, not individual components. Consequently, even without the significant problems discussed above, we would be unconvinced that their calculation produced a reliable value estimate for the property as a whole.
- g. Finally, the Kricks’ claimed that the PTABOA based its decision on inaccurate information. But our proceedings are *de novo*, meaning that we base our decisions on the evidence and arguments offered at our hearings. Thus, a taxpayer’s burden is to prove his or her claim to us, not to demonstrate that a PTABOA’s determination relied on inaccurate information or faulty reasoning.
- h. Because the Kricks offered no probative market-based evidence to demonstrate their property’s correct market value-in use, they failed to make a prima facie case for reducing their property’s 2016 assessment. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Nevertheless, the Assessor

agreed that we should reduce the Kricks' assessment to \$144,000, and we accept his concession.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the Kricks' 2016 assessment reduced to \$144,000.

ISSUED: November 29, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.